

## REMARKS

### **I. Status of the Claims**

Claims 8, 10, 11, 13, 15, 18-27 and 35-55 are pending in the application. Claims 8, 10, 11, 13, 15, 18-27 stand rejected under 35 U.S.C. §102(e), and claims 35-55 stand rejected under 35 U.S.C. §103(a). The specific grounds for rejection, and applicants' response thereto, are set out in detail below.

### **II. Rejections Under 35 U.S.C. §102(e) and §103**

Claims 8, 10, 11, 13, 15 and 18-27 stand rejected as anticipated by U.S. Patent 5,585,096 ("Martuza '096"). Claims 8, 10, 11, 13, 15 and 18-27 stand rejected as anticipated by U.S. Patent 5,585,096 ("Martuza '379"). Claims 35-55 stand rejected over U.S. Patent 5,846,945 ("McCormick '945") in view U.S. Patent 5,776,743 ("Frisch '743") and/or Martuza '096 and/or Martuza '379.

Applicants previously filed a Rule 131 declaration showing prior invention of subject matter within the scope of the claims prior to the Martuza and Frisch patent, and/or prior possession of at least as much as the relevant disclosure of the Martuza patents, which are relied upon for the rejections. In the Final Office Action, the examiner denied the relevance of this showing given that evidence of invention was allegedly narrower than that of the subject matter being claimed.

In a subsequent response, it was argued by applicants that prior possession of species is sufficient for the purposes of antedating a reference, even where the claim is broader (*i.e.*, generic) when compared to the evidence submitted. In the Advisory Action, the examiner acknowledged the propriety of applicants' "genus-species" argument, but alleged that the

submitted evidence only sufficed for conception, and that applicants had acquiesced on the issued of diligence.

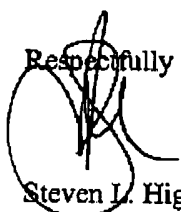
A telephone call was placed to the examiner on August 25, 2003, during which it was pointed out that the previously submitted declaration actually contained evidence of reduction to practice, thereby obviating the need for any discussion diligence. The examiner then indicated that applicants should submit a supplemental Rule 131 declaration with additional evidence on this point. Therefore, applicants are submitting such evidence, attached herewith.

In light of this evidence, reconsideration and withdrawal of the rejection is therefore respectfully requested.

### **III. Conclusion**

In light of the foregoing, applicants respectfully submit that all claims are in condition for allowance, and an early notification to that effect is earnestly solicited. **Should Examiner Priebe not be prepared to allow the instant claims, applicants request a telephone call to the undersigned.**

Respectfully submitted,



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